

The House Committee on Judiciary offers the following substitute to HB 540:

A BILL TO BE ENTITLED
AN ACT

To amend Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, so as to change certain provisions relating to voluntary separation, abandonment, or driving off of spouse; to create a duty in certain circumstances to provide child support for a physically or mentally impaired child beyond the age of 18 who is incapable of self-support; to provide for a definition; to provide for postminority child support in final verdict or divorce decree; to provide for modification; to change certain provisions relating to inclusion of life insurance in order of support; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is amended by revising Code Section 19-6-9, relating to voluntary separation, abandonment, or driving off of spouse as it relates to equity compelling support, as follows:

"19-6-9.

(a) Absent the making of a voluntary contract or other agreement, as provided in Code Section 19-6-8, and on the application of a party, the court, exercising its equitable powers, may compel the spouse of the party to make provision for the support of the party and such minor children and other children who:

(1) Are 18 years of age or older;

(2) Are physically or mentally impaired; and

(3) Are incapable of self-support,

as may be in the custody of the party.

(b) As used in this Code section, the term 'physically or mentally impaired' means that prior to the age of 18 the individual has been identified as having a medically determinable physical or mental impairment which results in marked and severe functional limitations,

1 and which can be expected to result in death or which has lasted or can be expected to last
2 a continuous period of not less than 12 months."

3 **SECTION 2.**

4 Said title is further amended by revising Code Section 19-6-10, relating to voluntary
5 separation, abandonment, or driving off of spouse as it relates to petition for support, notice,
6 and hearing, as follows:

7 "19-6-10.

8 (a) When spouses are living separately or in a bona fide state of separation and there is no
9 action for divorce pending, either party, on the party's own behalf or on the behalf of the
10 minor children and other children who:

11 (1) Are 18 years of age or older;

12 (2) Are physically or mentally impaired; and

13 (3) Are incapable of self-support,

14 in the party's custody, if any, may institute a proceeding by petition, setting forth fully the
15 party's case. Upon three days' notice to the other party, the judge may hear the same and
16 may grant such order as he or she might grant were it based on a pending petition for
17 divorce, to be enforced in the same manner, together with any other remedy applicable in
18 equity, such as appointing a receiver and the like. Should the petition proceed to a hearing
19 before a jury, the jury may render a verdict which shall provide the factual basis for
20 equitable relief as in Code Section 19-6-9. However, such proceeding shall be held in
21 abeyance when a petition for divorce is filed bona fide by either party and the judge
22 presiding has made his or her order on the motion for alimony. When so made, the order
23 shall be a substitute for the aforesaid decree in equity as long as the petition is pending and
24 is not finally disposed of on the merits.

25 (b) As used in this Code section, the term 'physically or mentally impaired' shall have the
26 same meaning as set forth in subsection (b) of Code Section 19-6-9."

27 **SECTION 3.**

28 Said title is further amended by revising subsection (e) of Code Section 19-6-15, relating to
29 child support in final verdict or decree, guidelines for determining amount of award,
30 continuation of duty to provide support, and duration of support, as follows:

31 "(e) *Duration of child support responsibility.*

32 (1) The duty to provide support for a minor child shall continue until the child reaches
33 ~~the age of majority~~ 18 years of age, dies, marries, or becomes emancipated, whichever
34 first occurs; provided, however, that, in any temporary, final, or modified order for child

support with respect to any proceeding for divorce, separate maintenance, legitimacy, or paternity;

(A) Entered ~~entered~~ on or after July 1, 1992, the court, in the exercise of sound discretion, may direct either or both parents to provide financial assistance to a child who has not previously married or become emancipated, who is enrolled in and attending a secondary school, and who has attained ~~the age of majority~~ 18 years of age before completing his or her secondary school education, provided that such financial assistance shall not be required after a child attains 20 years of age; or

(B) Entered on or after July 1, 2008, the court, in the exercise of sound discretion, may direct either or both parents to provide financial assistance to a child who:

(i) Is 18 years of age or older;

(ii) Is physically or mentally impaired; and

(iii) Is incapable of self-support.

As used in this paragraph, the term 'physically or mentally impaired' shall have the same meaning as set forth in subsection (b) of Code Section 19-6-9.

(2) In determining the amount of postminority child support to award, the court or jury shall consider how such award will impact such child's eligibility to receive supplemental social security income (SSI) and current ongoing eligibility for public assistance programs provided by any federal, state, local, and other governmental agencies. A court that orders postminority child support shall designate a parent of the child, trustee, nonparent custodian, or any appointed guardian or conservator of the child to receive the postminority child support for the child.

(3) The obligation for postminority child support may be modified at any time, even after the child's eighteenth birthday, by either party if the court or jury determines, in the exercise of its sound discretion, that there has been a substantial change in the physically or mentally impaired child's ability to provide support for himself or herself.

(4) The provisions for child support provided in this subsection may be enforced by either parent, by any nonparent custodian, by a guardian appointed to receive child support for the child for whose benefit the child support is ordered, or by the child for whose benefit the child support is ordered; provided, however, that an action for postminority child support shall not be brought by child support services."

SECTION 4.

Said title is further amended by revising subsection (d) of Code Section 19-6-34, relating to inclusion of life insurance in order of support, as follows:

"(d)(1) The trier of fact, in the exercise of sound discretion, may direct either or both parents to maintain life insurance for the benefit of a child who has not previously

1 married or become emancipated, who is enrolled in and attending a secondary school, and
2 who has attained ~~the age of majority~~ 18 years of age before completing his or her
3 secondary school education, provided that maintenance of such life insurance for the
4 benefit of the child shall not be required after a child attains 20 years of age.

5 (2) The court or jury, in the exercise of sound discretion, may direct either or both
6 parents to maintain life insurance for the benefit of a child who:

7 (A) Is 18 years of age or older;

8 (B) Is physically or mentally impaired; and

9 (C) Is incapable of self-support.

10 (3) As used in this subsection, the term 'physically or mentally impaired' shall have the
11 same meaning as set forth in subsection (b) of Code Section 19-6-9."

12 **SECTION 5.**

13 All laws and parts of laws in conflict with this Act are repealed.